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6 BEFORE THE INSURANCE COMMISSIONER
7 OF THE STATE OF WASHINGTON

8 In the Matter of

No. G02-45

9 THE APPLICATION REGARDING
10 THE CONVERSION AND
11 ACQUISITION OF CONTROL OF
12 PREMERA BLUE CROSS AND ITS
13 AFFILIATES

MOTION TO STRIKE TIMELINES
IN PREMERA'S FIRST SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO THE OIC STAFF

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15 **INTRODUCTION**

16 During the afternoon of October 31, 2003, Premera and its Affiliates ("Premera")
17 served upon the OIC Staff Premera's First Set of Requests for Production of Documents to the
18 OIC Staff ("Request for Production"). A copy of the instrument is attached hereto, marked as
19 Exhibit "A", and incorporated herein for all purposes. The Request for Production requires
20 the OIC Staff to produce for inspection and copying all of the requested documents "on or
21 before November 12, 2003." Request for Production 1. A quick review of the Request for
22 Production reveals that, at least, 86 separate categories of documents, in addition to electronic
23 versions of the documents, are required to be produced which encompasses documents
24 maintained by the OIC Staff, the Commissioner and those who assist him in this matter¹ and

25 ¹ The definition of the terms "You" and "Your" clearly include the Commissioner and his assistants
26 within the purview of the request. The question of the permissibility of serving a request for production

1 the OIC Staff's consultants and their employees. Moreover, Premera demanded that if the
2 OIC Staff were not producing the documents by November 12th, a fact that needed to be
3 communicated to Premera by November 3rd, Premera would move the Special Master for an
4 order compelling production." *Id.* at 1-2.

5 2. Because of the time required by Premera, the OIC Staff requests that the Special
6 Master strike the timelines set forth in Premera's Request for Production and require Premera
7 to abide by the time limits set forth in the Joint Proposal relating to the time to respond to
8 requests for production (30 days) and to file objections to requests for production (15 days).
9 The OIC Staff brings this motion subject to its right to file objections and to submit an
10 additional motion for protective order based upon other grounds after it has completed an
11 analysis of the impact of this request. *See* Eighth Order § 10, page 24; RCW 34.05.446(1).

12 **PREMERA'S ATTEMPT TO SHORTEN THE TIME FOR RESPONSE**

13 3. The number of individuals associated with the OIC Staff and with the
14 Commissioner and his assistants who will be required to review and identify both hard copy
15 and electronic versions of the requested documents easily exceeds thirty, many of whom are
16 located out-of-state making communication more difficult and time-consuming. Further, the
17 request covers a period of time that stretches back to, at least, September 17, 2002, the date
18 the Form A was originally filed, and also includes any documents that may exist that were
19 produced since May 2002, the time when Premera first announced its intention to convert to
20 for-profit status. According to Premera's timelines, gathering together the documents,
21 reviewing them for privilege/work product issues, and submitting them to Premera along with
22 a privilege log would have to be accomplished in less than ten days. Taking into
23 consideration the limited resources available to the OIC Staff, this is entirely unreasonable
24 and constitutes an abuse of the discovery process.

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26 encompassing documents that may be retained by the Commissioner who is serving as the presiding officer in this
matter is reserved for future discussion.

4. The Joint Proposal Regarding Discovery and Hearing Schedule dated February 27, 2003 (“Joint Proposal”) incorporates a number of agreements entered into between the parties in this matter that were submitted to the Commissioner. One of those agreements provides, in pertinent part “[t]he OIC Staff, Premera, and the Intervener Groups agree that each should be permitted, as of February 27, 2003, to make Requests for Production of Documents, which are to be responded to within 30 days (or on a rolling production basis ...) and that any objections be made within 15 days of service....” Joint Proposal § E(2), page 8. The Joint Proposal provides further that any party resisting discovery must file specific objections with the Special Master within 15 days after receipt of the document request. *Id.* § A(2), page 3. Premera’s representative participated in the negotiation of the terms of the agreement and signed the Joint Proposal on behalf of Premera. Premera’s unilateral reduction of the time to respond constitutes a violation of the agreement.

5. Prior to service of the Request for Production, Premera made no effort to contact the attorney representing the OIC Staff to discuss shortening the time for response and seeking a reasonable accommodation. Premera seeks to excuse its unilateral acceleration of the time established for response from thirty to twelve days by citing in support the Commissioner's directive to cooperate. Request for Production 1. The OIC Staff is committed to abiding by the Commissioner's directive contained in the Seventeenth Order: "Every effort should be made by the parties to cooperate and produce documents as quickly as possible." The Commissioner's directive does not grant Premera license to abuse the discovery process and renege on its agreements relating to discovery. Nor did Premera first seek and obtain permission from the Special Master after notice to the parties to relieve it from the terms of the agreement and for accelerating the time to respond.

REQUEST FOR RELIEF

6. The OIC Staff requests that the Special Master strike the timelines delineated in Premera's Request for Production and require Premera to abide by the time limits set forth in

1 the Joint Proposal relating to the time to respond to requests for production (30 days) and to
2 file objections to requests for production (15 days).

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4 DATED this 3rd day of November, 2003.

5 Respectfully submitted,

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7 CHRISTINE O. GREGOIRE
8 Attorney General

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11 Assistant Attorney General
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13 Attorneys for Office of the Insurance
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